

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

Supreme Court, U.S.
FILED

JUN 27 1979

MICHAEL RODAK, JR., CLERK

No. 78-1904

HOWARD MORLAND, ET AL.,
PETITIONERS

v.

THE HONORABLE ROBERT A. SPRECHER, ET AL.,
RESPONDENTS.

PETITIONERS' REPLY TO THE BRIEF FOR THE UNITED
STATES IN OPPOSITION AND THE RESPONSE
OF THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners are seeking a writ of mandamus directing the United States Court of Appeals for the Seventh Circuit to expedite review of the district court's order of June 15, 1979. Neither the United States nor the Court of Appeals presents any persuasive reason why the appeal from this order cannot be and should not be expedited. Rather, they oppose the petition for mandamus on the ground that petitioners did not do everything they could have done to expedite review of the district court's earlier order of March 26, 1979. Those objections are irrelevant to the present petition. The point is that petitioners and their current counsel have done everything that could be done to expedite review of the June 15 order, which is the only order at issue here.^{1/}

^{1/} Within minutes of the district court's order of June 15, a notice of appeal was filed in the district court in Milwaukee and motion for expedited appeal was filed in the Court of Appeals in Chicago. This petition was filed within 48 hours of the Court of Appeals' Order denying expedited review.

The brief of the United States requires no further reply. The response of the Court of Appeals, on the other hand, cites specific instances in which counsel for The Progressive, Inc. made representations to the Court which may have led it to deny expedition of the appeal from the March 26 order. See Affidavit of John L. Gubbins. Suffice it to say that the undersigned counsel did not agree with or acquiesce in all of those representations. Indeed, they did not even have knowledge of many of the representations until they read Mr. Gubbins' affidavit. But, we reiterate, the facts mentioned in the Court of Appeals' response and in Mr. Gubbins' affidavit are not relevant to the questions at issue here. The actions of counsel for The Progressive, Inc. with respect to the appeal from the March 26 order are not reasons to deny expeditious consideration of the claims of petitioners in the appeal from the district court's June 15 decision.

An 87-day delay in hearing argument on the appeal from the district court's June 15 order continuing a prior restraint is an intolerable burden on petitioner's First Amendment rights. For the reasons set forth in our petition, the Court of Appeals should be directed to expedite the appeal.

June 27, 1979

Respectfully submitted,

Bruce J. Ennis
Mark H. Lynch
Aviam Soifer

John J. McAvoy
Paul L. Friedman

American Civil Liberties
Union
Suite 301
600 Pennsylvania Avenue, SE
Washington, D.C. 20003
(202) 544-1681

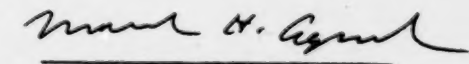
White and Case
Suite 500
1747 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 872-0013

Attorneys for Petitioners
Knoll and Day

Attorneys for Petitioner Morland

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Reply have been served by hand this 27th day of June, 1979 upon the Honorable Wade H. McCree, Solicitor General of the United States, and upon the Honorable Barbara Allen Babcock, Assistant Attorney General of the United States. Copies have been express mailed to John L. Gubbins, Esquire, Senior Staff Attorney, United States Court of Appeals for the Seventh Circuit, and to Earl Munson, Jr., Esquire. I further certify that all parties required to be served have been served.


Mark H. Lynch